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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration Of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-71
	)	
Telecommunications Services for Individuals With Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. ~~90-571~~
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

REPLY COMMENTS OF THE NATIONAL ALEC ASSOCIATION/ PREPAID COMMUNICATIONS ASSOCIATION

The National ALEC Association/Prepaid Communications Association ("NALA/PCA") hereby submits these Reply Comments in response to the *Further Notice* in the above-referenced proceeding and the initial comments received in response thereto.[1]

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[1] *In the Matter of Federal-State Joint Board on Universal Service, et al.*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking and Report and Order, FCC 02-43 (rel. Feb. 26, 2002) ("*Further Notice*").

I. INTRODUCTION

NALA/PCA is a trade association comprised of companies that since 1996 have been providing local telephone service to hundreds of thousands of residential consumers nationwide by reselling the flat-rate local telephone services and custom calling features of incumbent local exchange carriers ("ILECs").[2] NALA/PCA members' core customers are those that historically have been considered high-risk – due, for example, to a poor credit history or lack of sufficient identification – and thus unable to obtain local telephone service from ILECs. NALA/PCA members typically offer these consumers a fixed-rate local service option that restricts the customer's access to long-distance and other usage-based services (although in some jurisdictions blocking is either not available for all services or is cost-prohibitive). As a result, NALA/PCA members typically derive little or no interstate revenues from the provision of their services.[3]

In the *Further Notice,* the Commission proposes to reform the universal service fund ("USF") contribution mechanism in response to perceived concerns regarding its stability and sufficiency in an evolving telecommunications marketplace. As an alternative to the current system whereby carriers contribute based on their interstate revenues, the Commission proposes a connection-based scheme that it acknowledges would shift most of the universal service contribution burden from providers of interstate services to local exchange carriers, wireless carriers and other providers of intrastate services. *Further Notice* at ¶ 36. This proposal, which

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2 In addition to service providers, NALA/PCA members include a wide range of companies that support the prepaid local services industry.

3 Under current universal service rules, local exchange carriers contribute to universal service based in part on their subscriber line charges ("SLCs"), which constitute interstate end-user telecommunications revenues. *Further Notice* at ¶ *65.* Competitive local carriers, however, are not required to assess SLCs. *Id.* at ¶ 58.

generated significant opposition from a range of commenters, should be rejected. For the reasons discussed herein, the Commission should retain its current USF assessment mechanism and require interstate carriers to contribute based on their interstate and international end-user telecommunications revenues.

II. THE ACT PROHIBITS THE COMMISSION FROM SHIFTING THE UNIVERSAL SERVICE BURDEN TO LOCAL CARRIERS

If the per-connection proposal is implemented, NALA/PCA members will see an immediate and dramatic increase in their federal USF contribution obligations. Local carriers that pay federal USF on interstate SLCs will see their federal USF assessments jump from approximately $0.36 to $1.00 per residential connection.[4] *Further Notice* at ¶ 38 (proposing a $1.00 monthly charge per residential connection).

This increased monthly USF charge would apply even though the local carrier may be providing only intrastate services, such as local dial-tone and optional calling features, and generating minimal or no interstate revenues.

As various commenters recognized, federal USF assessments based on intrastate revenues cannot be reconciled with *Texas Public Utility Counsel v. FCC,* 183 F.3d 393, 446-448 (5th Cir., 1999) ("*TOPUC*"), which holds that the Commission lacks the authority to base federal USF assessments on a carrier's intrastate revenues. *See, for example,* Comments of AT&T Wireless Services, Inc. at 3-5. In *TOPUC*, the Court found that the Commission's decision to assess intrastate revenues exceeded its jurisdiction and therefore violated Section 2(b) of the Communications Act of 1934. *Id.* at 446-447. The Court concluded that Section 254(d) does not expressly confer jurisdiction over intrastate matters. *Id.* at 447-448. Finding no basis that would

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[4] Applying the current contribution factor of 7.2805 percent to the current $5.00 SLC results in a $0.36 charge.

allow the Commission to assert jurisdiction over intrastate revenues, the *TOPUC* Court "reverse[d] that portion of the Order that includes intrastate revenues in the calculation of universal service contributions." *Id.* at 448.

The per-connection proposal suffers from the same incurable jurisdictional infirmity. Because it cannot be reconciled with Section 2(b) and the *TOPUC* mandate that intrastate revenues be excluded from USF assessments, the per-connection proposal must be rejected.

III. THE CONNECTION-BASED PROPOSAL IS INEQUITABLE

A. The proposal favors interstate interexchange carriers by imposing a disproportionate burden on local carriers

Assuming, *arguendo,* that NALA/PCA members fall within the definition of "interstate telecommunications carrier" and are subject to Section 254, a connection-based assessment imposes upon these local carriers a disproportionate federal USF burden when compared to the federal USF burden of interstate interexchange carriers and others that depend on the interstate telecommunications network. As such, the proposal fails to satisfy the explicit statutory requirement of Section 254(d) that interstate carriers contribute to federal USF on an "equitable and nondiscriminatory" basis.

The National Rural Telecom Association ("NRTA") and the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") point out that the proposal "would practically exempt" interstate interexchange carriers while imposing "a discriminatory and inequitable contribution obligation on carriers whose primary interstate service is merely to provide the originating and terminating exchange access." Comments of NRTA and OPASTCO at iii, 8-12. The inequity and discrimination to which NRTA, OPASTCO and other commenters refer is magnified in the case of NALA/PCA members, most of whom (as resellers) do not collect access revenues.

B. A per-connection assessment penalizes toll-restricted and low-volume users of interstate services

According to a preliminary staff analysis, the "total contribution recovery fees paid by the average household," estimated at $1.93 per month, "would be approximately the same under a connection-based assessment system as under the existing system." *Further Notice* at ¶ 46. This preliminary analysis, however, minimizes the impact of the proposal on certain consumers. The initial comments validate the concerns of various parties that a $1.00 monthly connection fee would be "overly regressive and discriminatory to low-volume users." Id. at ¶ 49 (citing comments of Excel, National Exchange Carrier Association, OPASTCO, SBC Communications, Texas Office of Public Counsel, and Consumer Federation of America).

The National Association of State Utility Consumer Advocates ("NASUCA") correctly recognizes that "a connection-based mechanism inequitably places the same burden of contribution on those who do not use the interstate network as on those who are heavy users of the network." Comments of NASUCA at 2; *see also* 14. This is particularly true in the case of customers served by NALA/PCA members, who have elected to purchase toll-restricted service and typically derive only limited benefit from the interstate network. Much like the "digital divide," these consumers are caught in a "phone divide:" they are too rich to qualify for Lifeline service but given their credit problems they are too poor for traditional local service.

NALA/PCA members help bridge this phone divide by serving as "alternative universal service providers" to this segment of the market.[5] They ensure that even credit-impaired consumers are able to obtain local dial-tone, including access to emergency 911 services.

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[5] NALA/PCA members have not been designated as eligible telecommunications carriers ("ETCs") that qualify for universal service reimbursement because they do not provide 1+ and 0+ dialing capabilities.

NALA/PCA members help bridge this phone divide by serving as "alternative universal service providers" to this segment of the market.[5] They ensure that even credit-impaired consumers are able to obtain local dial-tone, including access to emergency 911 services. The imposition of yet another regulatory fee – particularly one unrelated to the services that their customers use – may have the unintentional result of regulating these carriers out of business. Such a result would leave hundreds of thousands of consumers without a viable local service option.

Conclusion

Therefore, based on the foregoing, NALA/PCA urges the Commission to retain its current universal service assessment mechanism and take no action on its per-connection proposal.

Respectfully submitted,

NATIONAL ALEC ASSOCIATION/
PREPAID COMMUNICATIONS
ASSOCIATION

Chad Hazam
Vice Chairman of Legal,
Regulatory and LEC Relations

May 13, 2002

[5] NALA/PCA members have not been designated as eligible telecommunications carriers ("ETCs") that qualify for universal service reimbursement because they do not provide 1+ and 0+ dialing capabilities.